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Docket No.: 0190 US/P

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Legal Staff
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WERNER H. STEMER



Signature

Dec. 1, 1998

Date

UNITED STATES IN THE PATENT AND TRADEMARK OFFICE

Applicant : Angelika Semsch, Elisabeth Schneider
PCT No. : PCT/DE97/00187
Appl. No. : 08/930,735
Filed : September 29, 1997
Title : Device for Preventing or Reducing Tipping
of the Head

REQUEST TO RESCIND NOTIFICATION OF ABANDONMENT AND
REINSTATEMENT OF APPLICATION

Hon. Commissioner of Patents and Trademarks,
Washington, D. C. 20231

Sir:

This is in response to a Communication and Notification of Abandonment in the above-identified application, mailed to counsel's office on November 23, 1998.

The communication states that the application is abandoned as of midnight on Monday, September 29, 1997 for two reasons. Firstly, the application was allegedly filed on September 30, and secondly the small entity amount of the filing fee was allegedly not supported by a properly executed small entity

declaration. The conclusions reached by the PCT Legal Office are incorrect and should be rescinded.

Firstly, the application was indeed filed on Monday, September 29, 1997. Enclosed herewith is a copy of an Express Mail label which shows that the application was deposited at the United States Post Office at 5 o'clock on September 29, 1997. The application papers were accompanied by a verified certification of Express Mail mailing date, which was executed on September 29, 1997. The person executing the Express Mail certificate was the same person who handed the application papers to the Post Office employee on September 29, 1997.

Secondly, when counsel received a Notification of Missing Requirements, form PCT/DO/EO/905, which was mailed from the Patent Office on December 10, 1997, counsel relied on the statement contained in the Notification that the large entity fee would be charged to counsel's deposit account. The deposit account number had been listed in the application papers. Accordingly, there was reliance on an official notification from the Patent Office and that reliance was proper. On the other hand, there was no reason to charge the additional fee to counsel's deposit account, because counsel, in response to the notification and within the time period of one month provided in the Notification, filed a properly executed small entity declaration. The small entity declaration was filed together with the properly executed declaration and a cover letter which was submitted on January 16, 1998. The filing bore a mailing certificate under 37 C.F.R. 1.8 dated January 12, 1998.

Accordingly, it is shown that the conclusions reached by the PCT Legal Examiner and the Paralegal Specialist were in error.

The application should be returned to regular pending status and the Notification of Abandonment should be rescinded.

Should any questions remain, the PCT Legal Office is requested to telephone counsel so that any questions may be promptly resolved. In light of the relative urgency of this application, the Office is respectfully urged to immediately notify counsel of the rescission of the holding of abandonment and of the proper reinstatement of this application to pending status.

Respectfully submitted,



For Applicant(s)

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Date: December 1, 1998

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